

CTR

COMMUNITY TELEVISION REVIEW

A PUBLICATION OF THE
NATIONAL FEDERATION OF
LOCAL CABLE PROGRAMMERS
VOLUME 15, NO. 2

Franchise Renewal

An Overview

Access Negotiation and Renegotiation

Ascertainment: Key to a Successful Franchise Renewal Process

Financial Analysis of the Cable Operator

Between Capital and Community: Concerns in the Renewal Process

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Seize The Time

Some 25 years ago, a group gathered at a park in northern California. Devotion to the right of the people to self determination and self expression was omnipresent. A gentleman in a black leather jacket emerged from the crowd and climbed onto the bed of a park service pickup truck and forcefully intoned "Seize the time!". This command became the hallmark of a movement that, indeed, became a state of being.

Those of you with whom I have talked know that my political fire was kindled in the sixties. This walk back through the decade of dedication, however, has a purpose beyond the pleasures of nostalgia. It is **relevant**. For those of you that better comprehend the economic parlance of the '90s, permit me to translate the title of this message to "Exploit the Opportunity".

The franchise renewal process brings **opportunity**—opportunity to improve and expand access programming where it now exists, and opportunity to establish this potent extension of expression in those areas where it is not now available. We must join in affirming and assisting each other's attempts to successfully exploit this opportunity.

To be successful, we must be fully prepared for the process. Our command of the facts—facts and understanding of the issues must be impeccable. Further, inasmuch as franchise renewal is in large part a political process, the level of public interest and support for access must be apparent.

By necessity, much of the concern during these proceedings may be focused upon practical, quantitative matters. We must all try to take some time, however, to reflect upon the high road for inspiration. Our purpose is to ensure the existence of a vehicle of expression that many throughout the world fight and die to acquire. Hopefully, our colleagues in the halls of corporate cable America will see the connection between that high road and the bottom line, and redouble their support, philosophical and economic, of PEG access. Similarly, we anticipate that the people, through their franchising authorities will reaffirm the vital role of PEG access as a vehicle for free and diverse expression. Now and in the years to come, more than ever before, PEG access can serve effectively in the furtherance of all democratic ideals, and particularly in the recently visible but historical, desperate quest for universal justice.

There has been a rapid rise in the number of calls and questions to the NFLCP regarding franchise renewals. Ultimately, we must proactively demonstrate that PEG access is fundamental, cost effective and in demand, and that any fear of the people and their institutions freely to speak via this conduit is unfounded. This issue of CTR is dedicated to providing you some help in achieving those objectives.

Franchise renewal. Exploit the opportunity. **Seize the time!**

— T. Andrew Lewis, Executive Director



PUBLIC POLICY UPDATE

PEG Access and the Pay-Per-View Olympic's Triplecast

During the summer of 1992 the cable industry is planning to offer additional coverage of the Olympic Games from Barcelona, Spain. The Pay-Per-View (PPV) Olympic's Triplecast may be providing up to three channels of PPV programming. Costs to subscribers will range from \$95 to \$170 for the full PPV package.

Several trade publications have speculated on the possibility of using PEG Access channels for this PPV programming.

The NFLCP would like to provide some guidance to our members on the issues involved and possible responses to a request by the local cable company to use one or more used or unused channel(s), (including Bulletin Board channels) for the Olympic's Triplecast.

At least two questions arise in this matter: under what conditions, and for what purposes should a franchise authority permit a cable operator to use a dedicated access channel; and, what role, if any, should an access corporation/provider play in such decisions?

The 1984 Cable Act has a provision in Section 611(d) for the use of PEG Access channel capacity if it is not being used for its designated purposes. Section 611(d) states:

In the case of any franchise under which channel capacity is designated under subsection (b), the franchise authority shall prescribe –

- (1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and
- (2) rules and procedures under which such permitted use shall cease.

When a cable operator wishes to use an access channel for some revenue-generating purpose like a special PPV event, the franchising authority who authorizes that use could be accused of converting public property to private uses, even if temporarily. This transaction would be permissible only if the cable operator gives the franchising authority some appropriate compensation, which might involve a monetary payment, an in-kind contribution, or a concession of some right under the franchise.

Several states have some jurisdiction over cable systems and may have procedures and timelines which need to be addressed. New York requires, in part, that notice be given to subscribers prior to the removal of a program service.

Cable operators may approach franchise authorities about the temporary use of currently programmed PEG Access channels. When the access channel is in regular use, such that the cable operator's use would interrupt the normal program schedule, the access provider should be entitled to (1) agree to the transaction and (2)

receive an appropriate share of the compensation assuming that the franchising authority has not previously reserved the right to preempt access programming on occasion.

Video Dialtone Threatens the Public Interest and PEG Access

On February 3, 1992 the NFLCP, Alliance for Communications Democracy and 22 cities and counties filed a joint Comment in the Video Dialtone proceeding. The following is a summary of that Comment.

Local regulation of television by wire is threatened by the First Report and Order. Localism must be restored if the video dialtone medium envisioned by the Commission is to serve the public interest. The use of local public property by a video dialtone system for private gain requires fair treatment of the local community's needs and interests, particularly in the form of regulatory benefits such as universal service, access for local programming and information, and consumer rate regulation. The Commission must refocus its primary concern toward protecting consumers and nurturing a true communications democracy.

Video dialtone will not provide substantial public benefits, unless video dialtone systems are governed by appropriate regulations. The Cable Act defines the type of regulation appropriate for point-to-multipoint video by wire ("television by wire"). These principles are also applicable to video dialtone insofar as video dialtone would deliver, among other things, television by wire. The central aspects of that regulation are: (1) access for non-commercial programming; (2) universal service; and (3) safeguards against monopolistic and anticompetitive actions. Congress' decision to adopt the Cable Act reflects its determination that these public benefits could not be maintained by market forces alone.

The proper venue for regulation to implement communications democracy is the locality where a television by wire system is installed and operates. Local governments are better placed than are federal regulators to determine local needs and conditions. Moreover, television by wire implicates numerous issues with which local governments are necessarily concerned, including issues related to the safe and productive use of public rights-of-way. Local regulation is also essential if video dialtone is to see the kind of wide-ranging experimentation the Commission seeks. The explosive growth of the cable industry since the passage of the Cable Act demonstrates that local regulation by franchising is compatible with a prosperous market for television by wire.

The Commission's proposal is unlikely to produce a system matching the Commission's vision for video dialtone. The proposal does not require universal service, the creation of an

(continued inside back cover)

INTERNATIONAL UPDATE

Video Olympics

With over 200 conference attendees, 20 countries and 23 or so official representatives, the 1992 Video Olympics were a success. For three and a half days in January, the conference followed a familiar pattern of workshops, a video awards presentation, food and good times. Set in the breathtaking region of Beaufort, in the French Alps, the first Video Olympics not only established support for a second Olympics in Norway in 1994, but won the commitment of UNESCO as a major sponsor as well.

The NFLCP delegation was one of the largest groups attending the conference. There were, all in all, twenty individuals from the United States including producers, access managers, NFLCP board members and friends. The list of conference materials and activities generated by the NFLCP included the NFLCP brochure (in French, Spanish and English), tape entries in six categories, "US Team" sweatshirts, position papers and panel presentations. The satellite relay (video one-way, audio two-way) which was produced by ACTV Cable 21, Columbus, Ohio, in conjunction with Paper Tiger and the Wexner Center, was a tremendous success.

Many, many thanks to all those individuals who participated at home and abroad in the 1992 Video Olympics. Your efforts truly helped to make this conference a very special event, and the NFLCP a valuable contributor.

Beyond Representation

The 1992 Video Olympics brought forward an array of new ideas and topics for discussion. The following is an update on one idea in particular which had been circulating for the past three years – that of forming an International Federation of Local and Community TVs.

While the basic issues which drive the development of community media remain, primarily, those of preservation (free speech, human life and culture), the political and economic concerns surrounding the organization of resources internationally are becoming more and more complex. For example, over the past three years, the idea of forming an International Federation of Local TVs had been fostered by an active core of community media representatives from several countries.

This year, however, the concept of decentralization and the desire to move away from bureaucratic structures became a major focus during the conference. A main factor in this shift continues to be one of representation as well as logistics. It became apparent that before there is any formation of an international federation, there is a need to "re-link" the North and the South; to engender greater collaboration between politically isolated cultures. The issue of representation has expanded to address the relationship of entire hemispheres.

The movement toward decentralized struc-

(continued inside back cover)



Deep Dish Spring Season

Deep Dish TV's sixth year of community-based programming by independent producers includes a replay of its *Behind Censorship: The Assault on Civil Liberties* series and a new series on current events and cultural diversity titled *Unheard Voices*. Satellite dates are running short, but for more information on tape availability, contact Iannis Mookas at Deep Dish (212) 473-8933.

CONNECTIONS

1992 National Convention

NFLCP members should have received their invitations by now to attend the 1992 National Convention and Trade Show in St. Paul, Minnesota, July 15-19.

This year's theme, **Telling Our Stories: One Drum, Many Drummers**, focuses on the expanding involvement and diversity in community programming nationally and around the world.

For further information on attending or exhibiting, contact Creative Meetings at (800) 531-1380, or the national NFLCP office at (202) 393-2650.

1992 Hometown USA

A record 2,087 entries from 412 cities in 40 states and three Canadian provinces were received for the NFLCP's 15th Annual Hometown USA Video Festival, the oldest and largest video competition in the nation honoring the work of local cable programmers.

The winners will be announced at a July 16 ceremony during the

NFLCP's 1992 National Convention in St. Paul, Minnesota.

Paper Tiger Roars!

Paper Tiger Television has announced the publication of **ROAR! The Paper Tiger Guide to Media Activism** in celebration of its 10th anniversary.

The 64-page manual features articles on the state of contemporary media by communications theorist Herbert Schiller, video producers Joan Braderman and Sherry Millner, and a host of others. Also included is a how-to section with instructions on the use of camcorders, graphics, and low-budget tools, as well as information on fundraising and pirate radio.

ROAR! was produced in association with the Wexner Center for the Arts at Ohio State University, which designated the non-profit, volunteer collective as one of its three artists in residence in 1991.

There is a nominal charge. For more information, contact Helen

Granger at Paper Tiger, 339 Lafayette St., New York, NY 10012, or call (212) 420-9045.

New Name Update

NFLCP members have come up with nearly 100 suggestions for renaming the organization. The responses came as part of a survey developed by the "New Name Task Force," a group formed at the NFLCP's 1991 national convention and charged with "developing a process, and making a recommendation, for changing the name of the organization."

If you have ideas for renaming the NFLCP, bring them to the 1992 convention in St. Paul where delegates will vote on a new name.

1991 Hometown Bicycle Tour

While judging is underway for the NFLCP's 1992 Hometown USA Video Festival, a sampling of the 1991 winners is now available from the national office.

The three one-hour tapes contain a total of 14 different pieces - three by professional producers, eleven by volunteer producers. The tapes reflect the potential for high-quality television production and the wide diversity of voices heard on access television. Among the subjects are ethnic expression, documentaries, free speech minutes, talk shows, music videos, programs for youth and seniors, and a variety of public service announcements.

Tapes are available on VHS or 3/4". Member prices for VHS are \$30 for one tape, \$40 for two, or \$50 for all three. Add \$10 for 3/4" tapes. Non-member prices for VHS are \$45 for one, \$55 for two, or \$70 for all three. Add \$10 for 3/4" tapes.

For more information, contact the national office at (202) 393-2650.

On the Calendar

South East Regional Conference

May 29-31, Tampa, FL. Contact David Vogel at 615.521.7475 or Ann Flynn at (813) 254-2253.

NFLCP National Board Meeting

July 12-15, St. Paul, MN. Contact the NFLCP at (202) 393-2650.

NFLCP National Convention

July 15-19, St. Paul, MN. Contact Creative Meetings at 800.531.1380 or the NFLCP at (202) 393-2650.

AN OPEN LETTER TO THE PUBLIC ACCESS COMMUNITY

It has come to my attention that certain access channels around the country have refused to run programming offered by the Jerry Brown for President Campaign. I am worried that such refusal violates not only constitutional and statutory mandates, but violates the principles of public access as well.

Public access was established as an electronic soapbox, to ensure that all could speak. In designing access channels, Congress mandated that they be "available to all". Both the Federal Cable Act and First Amendment prohibit governmental censorship of access programming. No governmental entity, including not-for-profit corporations that are licensed or contracted to run public access channels, has the right to censor programming or favor one point of view over another. If someone wishes to use the access channels, they are to be commended, not silenced.

I have heard several reasons given for keeping off the programming. None of these, in my opinion, can withstand legal scrutiny. First, it is illogical (and unconstitutional) to treat political or campaign speech as a lesser form of speech, subject to tighter programming restrictions. Political speech IS speech, and political debate is the heart of a democracy. To limit candidates to scheduled debate in order to ensure "a level playing field" misses the point of public access. Since all can gain access, without regard to ability to pay, access is, by its very

nature, a level playing field for all who wish to play. Similarly, to oppose the solicitation of funds misses the distinction between political fund-raising and commercial speech.

The Supreme Court has long recognized that the requesting and contributing of money for religious and political causes is entitled to First Amendment protection, while mere advertisements for commercial products and services do not receive similar solicitude. For the former, the fund-raising is inextricably linked to the communicative values of the endeavors. Finally, people voice concern that if campaigns can solicit money, they will overwhelm access. I have two responses to that. First, I have always argued, that, when it comes to access, "the more the merrier". I want access used. Second, any and all concerns for monopolization should be treated with content-neutral regulation, designed to permit as many speakers as possible.

In closing, I want it known that I have taken no money for this letter. As a long-time advocate for public access, and one who strongly believes in its promise of free speech and pluralistic communication, I believe that if access can survive the Klan and the Nazis, it can surely survive the Brown campaign.

If you have any questions, please call me at (410) 997-6930 or (410) 625-3094.

—Michael I. Meyerson, Professor
University of Baltimore Law School

MAKING THE PROCESS WORK FOR ACCESS

During the 1970s and early 1980s, the "Great Age" of Cable Franchising took place. Despite the fact that the *Midwest Video Case* had struck down the FCC's mandatory access rules, many of our towns and cities negotiated access provisions that spread PEG throughout the nation. In this post Cable Act period, most of these franchises are coming up for renewal.

For municipalities facing renewal, times seem uncertain. Cable regulation efforts continue to move through the Congress; the FCC is moving forward with Video Dialtone proposals; new technologies are being developed that we haven't even dreamed uses for. The nation's economy has placed unrelenting strains on municipal budgets, making cable dollars look increasingly attractive. These uncertain times pose new challenges to the development of community communications and the very survival of access.

For all these challenges, access is still growing. Franchise renewals have been negotiated in a thoughtful and productive manner. At least two factors are essential for this to happen. The first is continued grassroots advocacy on behalf of access. The second critical factor is to make sure that municipalities are prepared and committed to the renewal process.

This issue of CTR is aimed at providing a foundation for communities nearing or participating in cable franchise renewal. The articles cover a variety of issues and techniques for handling the process. It is our hope that you will find this issue to be informative and useful.

— Sharon B. Ingraham
Guest Editor-in-Chief

Franchise Renewal: An Overview

by Peter J. Epstein, Cable Attorney and General Counsel
to The Communications Policy Group, and
Sharon B. Ingraham, Brewster Ingraham Consulting Group

Franchise renewal is just as important as the original search and negotiations for the initial cable franchise. Technology and regulations have changed, experience has been gained from previous years of service (or lack thereof) and communities may want to negotiate to have PEG access services that may have been unavailable 10 or 15 years ago. However, unlike 10 or 15 years ago, the renewal process today is subject to the Cable Communications Policy Act of 1984, commonly referred to as "The Cable Act." Section 626 of the Cable Act sets out the process for municipalities and cable operators to follow during the renewal process.

Negotiating a cable franchise is a complex process which creates long term agreements affecting subscribers, the municipality and the cable operator. It is important to have proper legal, technical and strategic advice when drafting the cable contract to ensure that consumer services, access provisions, fees and other critical areas are included in the franchise in a clear and explicit manner.

Preparing for Renewal

A community should prepare for franchise renewal throughout the term of the existing franchise by holding periodic reviews of operator performance. Periodic evaluation of a cable operator's performance can create a valuable tool for a municipality by:

- Keeping the municipality up-to-date regarding the cable operator's performance;
- Allowing municipalities to build a complete compliance history for later use in a possible transfer, renegotiation and/or renewal process;
- Collecting data on provisions that were poorly or unclearly stated in the present franchise or are needed in the future franchise document.

Each provision in the cable franchise should be carefully reviewed. If the cable operator is providing unsatisfactory performance in any area, it should be informed in writing of the specific problem, including subsequent reporting requirements and a deadline for compliance.

This is important because a city cannot deny renewal based on the operator's past failure to comply with the franchise or provide quality service in any case where it is documented that the franchising authority has waived its right to object; has effectively acquiesced to the operator's conduct; or has failed to notify the operator of any defect. A community that performs periodic reviews of operator compliance with the franchise can protect itself against such claims.

Community Responsibilities in the Franchise Process

The municipality should take the following steps to prepare for renewal:

- Collect all relevant documents including the current franchise or ordinance, state and federal regulations, copies of all prior performance reviews, subscriber satisfaction documents and financial reports;
- Conduct consumer and community needs ascertainment;
- Assess the legal, technical and financial ability of the operator; and
- Carefully consider the community's cable-related needs, including but not limited to: Public, Education and Government Access provisions such as operating funds, equipment, facilities, channel capacity and management models;
 - Educational uses such as classroom utilization of cable, distance learning and shared teaching resources;
 - Municipal cable services such as data communications, institutional networks, metering, etc.

The Cable Television Renewal Process

Section 626 of the Cable Act mandates that a community and its operator can follow either a "formal" renewal process or an "informal" renewal process. Congress initially believed that while many communities would follow the informal process, it was necessary to design a more formal process as well, with explicit time frames and procedural protections for the operator, in those situations where an informal process was impractical. Deciding upon and understanding which process is to be followed is the first important decision the municipality has to make.

In the event that the municipality decides or is asked to follow the formal process, several things must occur. First, the decision to follow the formal process must be made within a 6 month window starting 36 months prior to the franchise expiration and ending 30 months before such expiration. Once the parties have agreed to proceed "formally", the Issuing Authority must commence so-called ascertainment proceedings to:

- identify future cable related needs; and
- review the performance of the cable operator under the current franchise.

At the end of these proceedings, the Issuing Authority may request that the operator submit a renewal proposal to the municipality. Many communities do so by issuing a Request for Proposals (RFP) to the cable operator, which details the types of services and facilities considered to be important to the community. The operator may also submit such a renewal proposal on its own initiative. In general, however, cable operators will wait and respond to an RFP, if that is the wish of the municipality. The franchising authority must pro-

vide public notice upon receipt of the renewal proposal. Once the operator has submitted a proposal to the municipality, the parties have four months from the end of ascertainment to negotiate the terms and conditions of a renewal license. If they are unsuccessful in doing so the Issuing Authority must issue a "preliminary assessment" that the license should not be renewed. At that point, and pursuant to Section 626(c)(1) of the Cable Act, the Issuing Authority, on its own initiative or at the request of the operator must commence an "Administrative Proceeding" to consider whether:

- 1) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
- 2) The quality of the operator's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix, quality or level of cable services or other services provided over the system, has been reasonable in light of community needs;
- 3) The operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and
- 4) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

At the completion of this administrative proceeding, the Issuing Authority will have to issue a "written decision granting or denying the proposal for renewal based upon the record of such proceeding." Note that the Issuing Authority may deny renewal if any one of the above criteria has not been met to the satisfaction of the municipality. If the Issuing Authority does deny the renewal proposal, the operator may appeal that decision pursuant to Section 635 of the Cable Act.

If the "election" (or reservation of the right) to follow the formal process has not been made within the initial 6-month time frame, the parties must follow the informal process, which simply allows the parties to negotiate renewal in whatever manner they wish (including the possibility of stricter evaluation criteria), at any time prior to the expiration of the cable license.

Conclusion

Local officials should take advantage of the opportunities that exist at the renewal stage. While some would argue that the Cable Act has placed severe confines on communities during renewal, the opposite is more accurately the case. Indeed, communities have a rare opportunity during the renewal process to ensure that renewal will be granted only if the operator builds and operates a system that optimally serves subscribers and the overall community.

Peter J. Epstein is a Boston attorney specializing in cable issues and franchising. He also serves as general counsel for The Communications Policy Group, a cable consulting group based in Massachusetts. His offices are at 101 Arch Street, Ste. 900, Boston, MA 02110. Phone: (617) 951-9909.

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Access Negotiation and Renegotiation: The Whats and the Hows

by Gennah Gail Copen
Copen & Lind Cable/Access Consultants

The actual provisions to be considered in license renewal for public access television are not so many or so complex, however the results of the negotiation process all over this country differ greatly. This has little to do with the quality or financial ability of each cable system or with the subscriber rates. It does have to do with how informed and active the access community or those representing the access community are during the term of contracts and especially several years prior to and during the actual negotiation or renewal process. The main areas to be considered in renegotiation are: operating budgets, capital grants and channels.

Yearly Operating Budget

The operating budget should be either a percentage, up to 5%, of the cable company's total gross revenues per year or a designated amount per year. There are many smaller communities who have been successful in getting the full 5% and larger urban areas who typically obtain and require between 2-4%. Some contracts call for a specific cash amount but it is important when doing this to remember to build in an escalator tied to the Consumer Price Index, increases in cable revenues or some fixed percentage per year to account for inflation. Of importance to your ability to operate are the terms of payment. Generally the cable operator provides support in 4 (quarterly) payments per year. This is much more desirable than contracts that restrict access cash flow to monthly payments. Also, remember, total gross revenues include more than basic or pay television. Revenues also come from installation, connection and reconnection fees (called churn), advertising, pay-per-view, pay back from home-shopping networks, converter box rentals, fees and any other services.

Capital Grant(s)

The 1984 Cable Act allows municipalities to require special capital grants for equipment as well as facilities, above and beyond the 5%. The capital grants usually take the form of a large initial grant and periodic smaller grants during the term of the contract. The large initial grant is usually used to provide the initial equipment base and to provide for design and renovation of a facility. The smaller periodic grants are to provide for equipment replacement and upgrade. It is important that the language "replacement and upgrade" is used in reference to these grants so that the access center can keep up with changes in technology as well as replace worn equipment.

Many newer contracts are requiring that the capital payments are made directly to the access center's interest bearing account for capital expenditures rather than sitting in the cable company's account until used. This gives the access corporation the very important control that they need to select their own equipment as well as gives the interest to the access corporation as they take

NFLCP Yellow Pages Coming Soon

The new NFLCP Yellow Pages promises to be an indispensable guide to cable consultants and attorneys dealing with access and franchise renewals.

Scheduled to be available for the first time at the NFLCP National Convention this July in St. Paul, MN, the Yellow Pages will also contain video production equipment vendors, NFLCP organizational members, the NFLCP Public Policy Platform, the 1984 Cable Act, government committees and commissions, independent producers and distributors, related organizations, and more.

For more information, contact the national office at (202) 393-2650.

Franchising Friends

Another group you should be familiar with when it comes to refranchising is NATOA (Nat'l. Assn. of Telecommunication Officers and Advisors). NATOA was recently cited in *Cablevision* magazine as one of the most effective forces in the refranchising arena. If you have a cable officer or administrator in your city, they are or should be a member. NATOA is affiliated with the National League of Cities and has several strong policy papers on refranchising and renewal. They also host seminars on the subject as well as conference sessions at their regional and national conferences. For more info contact:

NATOA
1301 Pennsylvania Ave. NW
Washington, DC 20004
(202) 626-3160

Tricks-of-the-Trade

➤ As video compression technology becomes more prevalent, your "channel" set asides for PEG access may lose some of their luster as the cable company compresses 6 channels into one 6 megahertz band width slot. Smart negotiators will secure a percent of available frequency for access. In other words don't ask for 6 access channels ask for 36 megahertz of frequency or 15% of all available frequency on the system. Then you have the option to compress signals and add more access channels or other distribution channels.

➤ Organize and justify your "laundry list" of needs for access during renegotiations. Remember, you need something on the table that you can give up if you have to. Some things asked for and received include: bill stuffers about access, local ad avails, staff positions, loan equipment, access to the institutional network, modulators, vans, engineering assistance, newspaper ads about access, microwave equipment, fiber interconnects, etc.

➤ Other than the unlikely option of denial, your most potent point of persuasion is the length or duration of the franchise. The industry wants long franchises for creditors and security. You have the option to grant a franchise for 3 years, so in effect, the day you sign you are into renewal again. Don't go over five years unless you get everything you want.

—Dirk Koning

the necessary time to put together an equipment package and select and renovate a facility. Please note that capital can not be used for operating costs but operating money can be used for capital costs.

Operating and Capital Costs

Operating and capital packages vary greatly. Capital is not just for video equipment but will be needed for office furniture, office equipment, design of equipment package, installation of equipment, and design and renovation of a facility. To give an idea of ranges from which you can make appropriate calculations here are several examples of successfully negotiated contracts.

Amherst, Massachusetts

Nonprofit Access Group:	Amherst Community Television
Cable Company:	Times Mirror/ Dimension Cable
Subscriber Base:	5,500 at time of renewal
Length of Contract:	10 years, 1986-1996
Company's Gross Revenues:	\$1,400,000 (approx.)
Annual Operating Funds:	5% of Gross (approx. \$70,000 in 1986)
Capital Grant:	\$371,000 (\$180,000 equip., \$40,000 up-grade, \$151,000 facility)
Access Channels:	3: (1- Public, 1- Educational, 1- Governmental)

Salina, Kansas

Nonprofit Access Group:	Community Access Television of Salina
Cable Company:	TCI
Subscriber Base:	16,000
Length of Contract:	15 years, 1992 - 2007
Company's Gross Revenues:	\$4,650,000 (approx.)
Annual Operating Funds:	2% of Gross + \$0.60 per sub. per month increasing at same percentage as increases in basic rate (Approx. \$208,000 in 1992)
Capital Grant:	\$350,000 + 5th and 10th year review for more, based on community needs, + \$150,000 based on special circumstances in the community
Access Channels:	3 Exclusive PEG Channels

Note: The city is providing 6,500-7,000 square feet free and utilities for the access facility.

Tucson, Arizona

Nonprofit Access Group:	Tucson Community Cable Corp.
Cable Company:	Originally Cox Cable
Subscriber Base:	New System in 1981, 1984=37,000, 1991=74,000
Length of Contract:	15 years, 1981-1995
Company's Gross Revenues:	1984: \$13 million, 1991: \$29 million
Annual Operating Funds:	1984-on: \$550,000 + \$190,000 grants for users, to increase by 5% per year
Capital Grant:	\$1.3 million (\$600,000: for equip., \$700,000: facility)
Access Channels:	13: (4-Public, 4-Educational, 4 Governmental, 1-Arts)

Know what you want for access. Get access provisions into the negotiation early on and as a priority – not at the tail end...Find out what other communities in your area, in your state and other states are getting....Create awareness of the need for access and the advantages not only to the subscribers but to the entire community and all its organizations....Mobilize your community to speak at public hearings, write letters, make phone calls and talk to officials.

GENNAH GAIL COPEN

Channels

The number of channels, cable drops for the origination of programming at organizational, governmental, and educational sites, and the internal wiring and interconnection of schools need to be considered. Also you will want to consider negotiating for a number of modulators for accessing those drops for live cablecasting. Numbers of channels and drops vary - look into nearby systems. It is better to get one or more exclusive channels than shared channels. There are provisions that can be added to the contract to trigger additional channels as the programming need arises.

The Negotiation Process

Now to the more complex issue of how to have a successful negotiation or renewal process. You must:

- Educate, inform, question, and articulate
- Identify the future access needs and interests of your community
- Build a strong community base
- Create a strong position from which negotiations take place
- Prepare presentations for public hearings
- Develop a record of needs and uses

Go into negotiations with as much information as possible. If you have the opportunity, try to get people involved on the negotiation team who are experienced and understand cable and access. Cable advisory councils are often charged with the responsibility to be the negotiators. Keep a positive dialogue with this team. Inform yourself, the negotiating team, and the community of what is possible to obtain in a contract. Keep communications open with municipal officials prior to, during and after the process.

Know what you want for access. Get access provisions into the negotiation early on and as a priority - not at the tail end. Allow plenty of time. Develop a 10 year plan and turn that into contract provisions. Consult with colleagues in other towns and cities who have dealt with the same cable company. Find out what approaches have worked and which have not. Find out what your cable company is doing in its other systems. The Cable Fact Book lists the different operators and where they have systems. Find out what other communities in your area, in your state and other states are getting.

Call the NFLCP, or an access consultant to find out about other systems comparable to yours. If you are not getting a fair share let your officials know. Review the operator's compliance record under the existing contract. Work to have an ascertainment process initiated. Hold workshops to survey needs and solicit support from nonprofits such as human services groups, arts groups, educators and schools, and government groups. Invite speakers in to talk to the community and community leaders about the possibilities of access. Involve the press and get them excited about the potentials of access. Create awareness of the need for access and the advantages not only to the subscribers but to the entire community and all its organizations. Mobilize your community to speak at public hearings, write letters, make phone calls and talk to officials.

If you currently have access, do the best you have with what you already have. The tactic that we "don't have enough" so let's show our plight is antithetical to obtaining the kind of eventual support you will need from your community in your renewal. Keep bolstering and supporting what you have. If there have been problems for access acknowledge them and present clear remedies and needs for the future. Stay informed, stay active, become proactive.

Press home several key points.

- 1) The cable company is usually a large corporation that takes out a tremendous amount of dollars from your community and sends it to their home office in another state. Access is a primary way for the cable company to return something of worth to the community in exchange for long term usually exclusive contracts. Renewal represents the best time to upgrade the system and services.
- 2) Know your company's gross revenues and let officials and community people know what the revenues are over the ten to fifteen year contract, so that they can put the cable company as well as your figures for access needs in perspective. An easy way to figure the company's gross is to use \$32.50 as an average for each subscriber per month times twelve months.
- 3) When cable companies say that subscriber rates will have to go up if they pay for access, know that this is not documented nationally. In many areas where there is good support for access, subscribers are not paying any more than where there is little or no support for access, sometimes less. Check around - get actual facts and figures.
- 4) What keeps the company at the negotiation table, besides large, long term contracts, are the provisions of the 1984 Cable Act which allows franchising authorities (Select boards, City Councils, Mayors, State Boards in VT, CT or RI) to deny contracts or renewals if either the cable operator's past performance or proposals for the future do not meet the reasonable needs of the community.

So establish the needs, keep learning, community building, and become an integral part of the (re)negotiation process.

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Ascertainment: Key to a Successful Franchise Renewal Process

by Sue Miller Buske
The Buske Group

A thorough, multi-faceted ascertainment process can be the key to a successful outcome during franchise renewal. The Cable Act appears to have anticipated the need for ascertainment. Each of the four areas to be considered by a local government with respect to a cable operator's proposal for franchise renewal appears to require some form of ascertainment and/or performance review. As stated in the opening article "The Renewal Process: An Overview" these areas include franchise compliance, quality of service, the ability - both legal, technical and financial - to support the operator's new proposal and responsiveness to community needs.

Unfortunately, local governments sometimes spend little or no time on ascertainment and thus have no real data upon which to base their negotiating position and their decision to preliminarily grant or deny a renewal.

The key to a successful ascertainment, particularly in the areas of access and future community cable related needs and interests, is the ability to obtain informed opinions from the community and its leaders.

Informed opinions are critical and are difficult to obtain if community leaders within various constituencies are operating with a lack of information about what opportunities and cable services exist in other communities and about the "state-of-the-art" in cable technology, services and PEG access.

One method used to gain informed opinions is a process which includes several steps. The first step is to conduct a series of workshops targeted to key constituencies in the community. These workshops provide information about areas such as:

- How the franchise renewal process works
- How a cable system works
- The nature of modern cable service in critical areas (e.g. programming, customer services, system design and technology)
- Public, Educational and Government Access.

At the workshops, special emphasis should be placed upon how the above information affects the constituency in attendance at each workshop.

During these workshops, a brainstorming process is very useful in focusing the thinking of the participants regarding what uses of cable services and access they would most like to see maintained or made possible as a result of the franchise renewal process.

Next, each workshop participant may be given a questionnaire to complete. This type of questionnaire is designed to permit the respondent to clearly express needs and expectations to be fulfilled during the renewal process. It also permits them to identify existing problems with the delivery of cable services. The information gathered through this type of process has proved very useful in establishing negotiating positions. It is also successful in developing significant involvement in the franchise renewal process by a wide variety of interested individual and community groups and organizations.

This brief article has touched on only one area of ascertainment. Other areas of ascertainment typical to a franchise renewal process include:

- Market study
- Performance review/ascertainment of current franchise
- Technical and financial ability
- Customer service
- Review of any current PEG access operation(s).

The development of a plan for the franchise renewal process which allows eighteen months to two years to complete is most helpful in assuring adequate time for ascertainment, as well as negotiation.

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SUE MILLER BUSKE

Financial Analysis of the Cable Operator: Making Dollars into Sense

by Pamela J. Brewster
Brewster Ingraham Consulting Group, Inc.

Are the monthly rates charged by your operator reasonable? Will your operator have the financial capability to provide good service going forward? Are adequate provisions being earmarked for community access? These are just some of the questions that can be answered by performing a financial analysis of your cable operator. A thorough analysis can determine the fairness of rate increases and other costs against the community's needs in terms of service, programming and plant upgrade.

To start the process, a complete set of the operator's financial statements (preferably audited) should be made available for inspection. Included among the documents should be profit/loss statements, balance sheets, statements of cash flow, gross revenue breakdowns and subscriber information. Historic, present and future (or proforma) reports are preferable in order to uncover the pattern of your operator's performance over the life of the current franchise and that expected going forward. At least three to five years of past financial records are recommended in order to prevent an operator from temporarily shifting expenses and income between its entities, in order to influence the current negotiations. You can use past performance as a gauge against anticipated performance. In particular, scrutinize the operator's revenues, cash flow, capital expenditures and debt obligations. Many cable operators are highly leveraged, which means that their operations are funded by banks or other creditors. As such, any cash that comes into the system is immediately turned back over to these creditors in the form of interest and principal, which means less money available for plant upgrades and maintenance, access provisions and other expenditures.

Also, for your purposes, the cable company's cash flow number is more important than the operator's profit number. *They are not the same thing.* The company's cash flow number is calculated by taking the net earnings (profit) number and adding back items such as depreciation, amortization, taxes, extraordinary items and interest expense. This number is the basis on which industry and stock market analysts judge the health of an operator.

Simply eyeballing the financial statements is not sufficient to determine your operator's ability to perform. Conducting ratio analysis is the primary way in which to analyze the operator's profitability, efficiency and financial

stability. The most common ratios follow:

$$\begin{aligned}\text{cash flow margin} &= \text{cash flow} / \text{revenues} \\ \text{leverage} &= \text{debt} / (\text{debt} + \text{equity}) \\ \text{debt capacity} &= \text{debt} / \text{cash flow} \\ \text{interest coverage} &= \text{cash flow} / \text{interest}\end{aligned}$$

These ratios should be viewed over time in order to identify any significant trends or variations between years; as well as compared to industry averages and the ratios of key competitors. Currently, cash flow margins for cable operators average around 45%, leverage is around 75%, debt capacity, no more than 7 times cash flow, and interest coverage around 1.3. Any discrepancies can be noted and addressed during the negotiation process.

Your operator should also provide you with projections of its forecasted growth, profits and cash flow. Make sure when looking at these numbers to get the operator's assumptions regarding rate increases, growth of revenues, costs, capital expenditures, financial requirements and other factors. Check these assumptions to historical results, trends and industry expectations. In some cases, the cable operator does not release financial information without pressure. If you find your operator highly resistant, you can suggest signing a confidentiality agreement to protect the material handed over, or have a lawyer obtain the information. If the operator still withholds the information, you can stress that under the Cable Act, renewal can be denied if the operator does not have the financial wherewithal to provide adequate operations and service. Without seeing the operator's numbers this cannot be assessed!

Finally, it is important to remember the importance of compromise. Your cable operator is accountable not only to the community, but also to its creditors (and in the case of equity participants, shareholders and partners). In this respect, an understanding of the operator's constraints will allow for a more professional negotiation in balancing the needs of your community against those of the operator.

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Between Capitol Hill and City Hall: State Governments and PEG Access

by Samuel H. Press
Portnow, Little & Cicchetti, P.C.

Access advocates should not overlook potential allies in the state capital to establish or enforce PEG access requirements. In most states, local governments grant the franchise to a cable operator, and enforce it as a contract between them. But authorities at the state level often have a role to play.

Their role varies greatly from state to state, depending on their legal power and policy about cable in general and PEG access in particular. At least three states (Connecticut, Rhode Island & Vermont) grant franchises directly, rather than through municipalities, and in some instances regulate cable systems in a manner akin to utilities. Access issues must be raised at the state level. Depending on the system, it may be possi-

ble to intervene in administrative proceedings to make general rules, grant a franchise or renewal, or enforce a franchise. Advocates may participate to urge officials to require PEG access as a condition to receiving or transferring a franchise, or to investigate and enforce an operator's compliance with its obligations. It is usually possible, at a minimum, to present information in written comments and at public hearings.

Other states leave franchising to local government but carry on some degree of regulation which could influence PEG access. Such states (e.g. Massachusetts, New Jersey & New York) may promulgate service standards and rules, oversee the local franchising process or provide technical assistance to municipalities.

State involvement, for the most part, presents a valuable opportunity to educate and lobby for appropriate PEG access. Experienced state offi-

cials tend to be more knowledgeable about cable operators than municipal authorities who have rarely, if ever, seen the issues before. There may be the additional time and trouble of travel to the capital, but it is possible to hold local hearings.

Because of the many differences between state and local cable regulation, it is wise to research the law and practice in your state. Whatever the system, the advocate's task is fundamentally the same: making a solid case for the importance of PEG access to the community, and presenting a well thought out and feasible plan to achieve it.

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Engineering & Technical Concerns in the Renewal Process

by Alan S. Hahn
Hickory Mountain Associates

Signal quality, technological advances, system upgrade and municipal services are all concerns during the technical review of a cable operator's proposal. How does the franchising authority protect the community against the threat of system technical obsolescence during the next decade or more? Determining the answer to these far-reaching issues requires a hard look at the existing system, evaluation of desired options and a well crafted franchise agreement.

During renewal, a typical engineering review of the cable system will include:

- a. Reviewing the existing system including the coaxial cable system, headend equipment, satellite and broadcast receiving equipment, microwave equipment, and subscriber terminal devices
- b. Conducting field inspections of the operational cable system:
 1. Assessing signal quality at the headend and at the ends of the longest amplifier cascades in the system
 2. Inspecting a randomly selected sample of the total system mileage to assess its compliance with city franchise requirements, FCC Rules and Regulations, OSHA standards, FAA standards, the Bellcore Manual of Construction Practices, and the National Electrical Code and National Electrical Safety Code
 3. Carefully monitoring cable system signal leakage to ensure that the system complies with current FCC standards
 4. Examining the headend and satellite/broadcast receiving antennas to ensure that these installations comply with applicable codes and regulations
- c. Reviewing the geographic coverage areas of the cable system's Subscriber and Institutional Networks to ensure that these conform to franchise commitments; and
- d. Preparing a detailed engineering report describing the theoretical capabilities of the present cable system; its operational condition compared to those capabilities; significant discrepancies found during inspections; and recommendations for corrective action.

Here are some important areas to consider:

- How does the existing cable system's channel capacity compare to the 60 to 80 channel/440 to 550 Megahertz state-of-the-art? What plans for upgrading to such standards are included in the operator's proposal? Does the operator propose to add digital channel compression to extend subscriber choices even further? How strong are the operator's commitments?
- Do the operator's proposals address the potential addition of PCN/PCS (Personal Communications Networks/Services) to the network? Has the operator designed the new cable network to accommodate future PCN/PCS concentrators effectively?

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ALAN S. HAHN

[Clues to PCN/PCS market potential in the community may be obtained by assessing the current market penetration of cellular radiotelephones, facsimile equipment and personal computer systems, since users of such equipment are all considered to be the best market for PCN/PCS applications.]

- Does the existing system cover the entire franchise area (universal service)? If not, will the proposed new system do so? Will all services proposed by the operator be available throughout the system? Is there a timetable for new service introduction?
- Has the operator proposed to work with the community to develop the many "Distance Learning" capabilities modern cable systems offer? How might such capabilities be used to provide for enhanced educational opportunities or reduced educational costs in the community?
- Does the operator propose to share and interconnect public services with neighboring communities? These can result in real municipal budget savings at the local, municipal and county level.
- How will the public's growing awareness of and desire for more effective PEG access programming be met? Will the new electronic system proposed have sufficient technical support? Who will provide support and how strong is the commitment?

Finally, does the new system, as proposed, really anticipate the introduction of new technology or merely talk about it? If the latter, it may become increasingly difficult for the cable system to remain economically viable as competition from MMDS and DBS services and other telecommunications providers mounts in the coming decade. Cable television technology in 1992 is a far cry from that of fifteen years ago, and the refranchising community will be well advised to assume at least as much change will occur in the next fifteen years.

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...more Tricks-of-the-Trade

➤ An interesting way to keep tabs on your cable operator, if they are a public company, is to buy a few shares of their stock. You receive stockholder reports, quarterly financials, annual reports and in some cases proxy votes. Also you can call the corporate office as a stockholder and request additional information. Who knows, you might even be able to cash some dividend checks.

➤ Don't forget to ask the operator for "as built" prints of your system. These have multiple benefits. First, they are a very detailed map system of your community. They indicate how the system is built, underground or aerial, where the amplifiers are and what the power levels are. They also indicate what homes have cable and where the nearest line is for those homes that don't have cable.

➤ When it comes to annual audits of the cable operator, make sure that they are completed by an independent company. If you really doubt the results, there are several businesses that come into a community and research the gross revenues of the cable operator. They often work for a percentage of any discrepancies they discover.

➤ Don't overlook the value of a good technical advisor during your refranchising. You must know the details of your system and what plans they have for upgrade. If your system doesn't plan to dump co-axial copper cable in lieu of fiber optic strand over the next 10 years, start asking more questions.

—Dirk Koning

ADRIAN HERBST JAMES HORWOOD NEIL LEHTO AND PAUL PROCTOR

CTR Guest Editor-in-Chief

Sharon B. Ingraham probes the state of access in current franchise renewals with four professionals on the frontlines of the renegotiation process.

INGRAHAM: How is access faring in recent renewals or renewals that are now underway?

HORWOOD: My sense is that access is not faring well because cable companies are tending to hit hard on the funding.

LEHTO: In several franchises in the metropolitan Detroit area and in Michigan, access has received modest amounts of new equipment. I haven't seen any franchises where access centers were the recipients of grants for operating funds that were passed through the renewal stage in the last couple of years. Many renewals are upcoming and the people who are involved have to be careful. Where there's been some funding provided, it was short term and in small amounts. In one case a community outside of Detroit, Harrison Township (@15,000 subscribers), received a \$5,000 annual grant for educational access in a fifteen year renewal. I don't think there was any hard negotiating in that community, but it reflected a bottom line willingness of cable operators to continue to fund some access equipment. That particular system and some of the sister systems served by that operator had not received any funding from any of the original franchises in the early '80s.

PROCTOR: Generally, we have certainly seen cities and counties wanting to have access in the renewal process. Many of them are very open and willing to at least indicate in their renewal process that they want it and they expect the operators to fund it. I have been concerned that in a number of these situations, we are not seeing what we saw in the early '80s. Municipalities confirm having access because a number of people in the community want it, however; as we are all talking about the funding, in many situations some of them just want to address access by indicating that the operator should function with or cooperate with whatever access entity is designated by the city or county. We've run into that type of language in a number of places and don't feel that generalization is adequate in a renewal process. Once again, we are not seeing the commitments of the early '80s in the funding and we don't see it in the philosophies and attitudes of some of the counties and municipalities. It just seems that access is a side issue... "we'll try to cover it so that during the life of the next franchise period, if people want this service they have it somewhat negotiated." My concern for those of us in the access arena in renewal is to

really be able to do a better job of convincing municipalities to stand firm and realize that they can get these components in their franchise for equipment and funding. As an organization, we really have to work much harder at putting together some programs to help communities get that additional funding that they need for operations. As most all of us know there have been a number of instances where some or all of franchise fees have been designated for access use. A lot of this is really an economy-based issue that we're going through. Hopefully, as the economy improves, some of our negotiations on behalf of access in the renewal process will improve.

HERBST: It's a pretty mixed deal out there in terms of how cable operators are reacting to cities on access. What it really boils down to is how strong a commitment the particular community makes on access. If, for example, a city really prioritizes access and makes it an important issue in the renewal process, we've been pretty successful at coming out with good arrangements for the community. TCI seems to be the most difficult company to deal with, especially where a city has not done anything in the past and doesn't have any really strong goals. It's pretty hard to develop anything with a cable operator, other than some flexible language in an ongoing franchise, if a city hasn't put together a sound process with clearly stated needs. In Richmond, Virginia, for example, where funding had been a serious issue in the past, we came out with a wonderful new arrangement for the city. The city kept on negotiating for a period of nine or ten months and worked out a very good settlement that was much better than what they had in the past. Another thing that we've done in a lot of communities has been anticipating some of the issues where the Cable Act definition of franchise fees would seem to indicate that you can't require support and money for access, other than for capital costs. To avoid that issue, a number of clients have wanted to negotiate a transfer of access management and further negotiate a separate agreement and funding arrangement directly with the company outside of the normal franchise. Several of those arrangements have worked out pretty well, too. For the most part, we haven't experienced a lot of difficulty because we've just planned for access negotiations and have taken into account that there is a concern about how access can go forward and be funded under the federal Cable Act.

INGRAHAM: How can municipalities build flexibility and enforceability into a franchise?

HORWOOD: The first thing that comes to mind is to have a relatively short renewal term. If you have a franchise term of five years and you're coming up for renewal again, this gives you the ability to get changes into the franchise and keep the company more on its toes. Having severability provisions is a good idea. Having review provisions or reopeners gives you an opportunity to review things as you go along. A useful matter to put in a franchise is to allow increased enforcement penalties or fees if federal or state laws change. Some older franchises were geared to the old 3% franchise fee that was in place before the Cable Act and there was no ability to increase fees when the ceiling was raised. So don't write franchises looking strictly at today's law, because things may improve in the future. If it gets worse, they won't be enforceable anyhow. From the standpoint of access, if there is an independent access organization, having a separate access agreement with the cable operator is probably useful to prevent changes in the city administration from affecting access adversely.

HERBST: Those are all very good suggestions. One other reason for using the franchise term idea is that technology is changing so much. One of the items we've tried to insert is an incentive arrangement where the operator waits three or four years and then develops an upgrade plan. The plan should utilize new technology and be approved by the city. If the system is built by year five, the franchise would be then be extended for ten years, for a total fifteen year franchise. That way the city participates in the upgrade of the cable system, but gets past this period where there is a lot of confusion about which technology option is best. We've used that arrangement to build in some flexibility and I think it's worked out pretty well.

LEHTO: Adding most-favored-nation clauses in suburban areas or small communities would be useful. These clauses say that if an operator provides new services or an equipment upgrade to a community on the other side of the state, it has to be done locally, as well. A clause that anticipates changes in the law and asks for re-openers in the event there is some significant change in the law would be a useful tool, a concept that's understood well by many people.

PROCTOR: A number of communities, even if

they do have a section in their franchise for penalties, forget they do still have some rights in those areas. I try to encourage folks to include enforcement language and people are beginning to become familiar with a variety of penalty and performance bond clauses that have been written in franchises. Some municipalities are not aware that they can still enforce different sections for reporting and so forth. Reporting requirements are often lacking in contracts and we also try to offer cities better reporting mechanisms. If the city does not have a cable officer or really someone identified to look at cable, these reports can come in a periodic manner and be viewed more easily. I would also add a section calling for periodic reviews of franchise compliance. We highly encourage those provisions because they work well, particularly with respect to the state-of-the-art clauses as well as access operations.

INGRAHAM: What are the consequences of denying a renewal?

LEHTO: I think that we'll be up to our elbows in lawsuits. Most of the municipalities in the State of Michigan would find it very difficult to conceive of a situation in which they would go to the point of denying renewal. It seems so difficult to justify.

HORWOOD: As Neil says, the major consequences of a denial are lawsuits although lawsuits can be won. We've been involved since 1986 with a case involving Morganton, North Carolina, which denied renewal and decided to establish a municipal system. It's been constant litigation since then and the city has prevailed all along. That was a case which did not fall under the Cable Act procedures and renewal would have been even more difficult under the Act. The problem under the Cable Act, is that for several of the grounds for renewal, the company has to be given notice and opportunity to cure. The only other case where renewal has been denied has been Rolla, Missouri. In both Morganton and Rolla, the facts were pretty extreme. What's essential when denial is to be considered is to have good records and good notice to the company all along the line. If renewal is denied, there is the difficulty of managing the transition from a system that's been denied to the new system coming in. For example, will the new system take over the facilities of the previous system? Generally it doesn't make sense to do that, because if a renewal is being denied, it's probably because the operator didn't maintain a good state-of-the-art modern system and it's usually cheaper to start from scratch. Despite all that, renewal can be denied under some circumstances, but it's difficult, expensive, messy and takes a long time.

LEHTO: One of the systems I'm familiar with just invited an overbuilder to come into the community and succeeded in doing so. The older

If... a city really prioritizes access and makes it an important issue in the renewal process, we've been pretty successful at coming out with good arrangements for the community.

ADRIAN HERBST

system, which was technologically very poor and very poorly maintained, is slowly losing ground in that community and will go out of business on its own.

HERBST: What does everyone think the effect of preliminarily denying renewal has on the process? Let's say you do have a bad situation and you haven't been able to work it out, would making a preliminary determination to deny provide some leverage to the negotiation process and bring the cable operator back to the table in a more constructive way to negotiate a good resolution? This doesn't happen very often to be sure, but I recall one situation involving a transfer of ownership where the city just plain denied it and the cable operator came with hat in hand and decided to really sit down and talk to the city to resolve a lot of past differences. It was a community where they had a very poor cable system and the operator decided to enter into a new arrangement where they would rebuild the cable system and do a lot of things that the city wanted. If in fact you don't want to renew, it is worth it to see if this course of action might bring about some sort of response on the part of the cable operator which might otherwise not be achieved?

HORWOOD: I think a preliminary decision to deny renewal is a good idea, but only if it's credible. If you are bluffing, the cable operator will, of course, see through it. The other thing which causes cable operators to shape up is to talk about municipal ownership as an option. When that happens, you'll find that the cable operator changes its behavior in order to move things along. But like preliminary denial, it can't be an idle threat, but has to be something the city is serious about as an alternative.

INGRAHAM: When is municipal ownership a viable option?

HERBST: In all the years that I have worked in cable, I've had more calls about municipal ownership than at any other time. It usually boils down to the situation that I've already talked about, like the quality of the system or the arrogance of the operator, who just plain isn't going to do anything for the community in terms of improving the cable system. It can happen where the community has had lots of transfers of ownership and keeps getting new cable operators and corresponding increases in rates. There are also a lot of frustrations in terms of not getting upgrades of the cable system, for example many smaller communi-

ties with 15 or 20 channels are paying the same rates as metropolitan communities with 60 channels. They don't think that's very fair and it's all of those reasons which make a community step back and say "Look, we can bring stability to the whole thing and control the rates better." I think the more outlying or smaller communities are very interested in this. They also see that there might be some municipal services that they can provide over the cable system that would provide an added benefit to their ownership.

LEHTO: I think, Adrian's hit the nail on the head. There are many mid-sized communities that do have experience operating utilities, such as electrical power. Otherwise, I think they lack the confidence or ability to finance it and bring it off.

PROCTOR: Before a municipality considers operating its own system, it should take the opportunity to consider bringing in another operator to provide services. It's a good idea to look at the competition and invite other operators to come in and apply for franchises. This is particularly important to communities which are a little more shaky and less confident about running their own system.

HORWOOD: Most cities, particularly now that cable is no longer a new idea, who are seriously looking at municipal ownership do operate their own electrical services and infrastructure. One of the first things we think the city ought to do is determine the attitude of residents in the community toward the municipal electrical system or the city in general, because if people don't have a positive attitude toward the city, a municipal cable system isn't going to be successful, particularly in an overbuild. Any city considering this option this has to be willing to hang tough, because there is apt to be litigation. A city should look to State law to first determine whether cities are even authorized to be in the cable business. In some states, cities are not authorized to go into the business. The city has several kinds of ownership options. It can own and operate the system, it can have somebody else build the system and the city will operate it or the city can build the system and have somebody else operate it. There are all kinds of options for a city that wants to consider municipal ownership.

INGRAHAM: Some of you have mentioned overbuilds, where the city gives out additional franchises. How good an option is overbuilding?

HORWOOD: So far it hasn't been a very viable option. What you find is that where there is an overbuild, the existing operator keeps the prices low. For example, while Glasgow, Kentucky put in a municipal overbuild and has managed to hang in there, we were involved in a Virginia community which several years ago put in a municipal overbuild

and the cable operator cut prices considerably. Both the city and the cable operator couldn't survive and the cable operator ended up selling the system to the city. Thus far, overbuilds haven't worked well overall, but more municipalities are considering the possibility.

HERBST: In Elbow Lake, Minnesota, they knew or expected that they would get into a rate war. What happened is that the cable operator paid people to subscribe to their cable system. Initially a lot of people in the community dropped off the municipal system, but most all of those have come back now for a variety of reasons, one of which probably is just plain loyalty to the city. The city spent a lot of time studying the issue and many of the people said that if the city built a system they would support it. Secondly, it is a better cable system. The picture quality is superior and it offers more channels and more services. Even though the city has had to lower their rates and is not making a profit, they are operating and making their expenses. But they are not making out as well as they had hoped for. The city also asked the state attorney general's office to take a look at some of the activities of the cable operator, that they feel constitute antitrust problems. Our attorney general is taking a look at that and I understand that attorney generals, in general, are looking at a number of issues like that around the country because operators have precluded cities from getting certain programs, such as sports, through exclusive contracts and a number of other actions that are anticompetitive in nature. Each operator action alone wouldn't be a problem, but when you accumulate all the different problems there is a question about how those actions would or wouldn't violate anti-trust regulation.

PROCTOR: One matter related to this that leads us into the next question on video dial tone. During a recent renewal, the city realized that they already had a fiber phone system. We got the cable operator, phone company and city to sit down and discuss the possibilities. This is going to be a totally underground plant and the city has been concerned about all the construction for the laying of new cable. They are continuing to look at the issues and try to work together. That's another alternative we don't think about up front these days and probably should.

INGRAHAM: What effect do you think that proposals, such as video dialtone will have on the renewal process?

PROCTOR: Until we get some legislation that says the phone companies have to have negotiated franchises, we should be concerned. Some of the effect on renewal will depend on whether there are any connections between cable operators and phone companies. As I said earlier, I hope those possibilities are going to be investigated by communities

The worst thing a community can do is throw up its hands and say that because renewal seems automatic there is nothing it can do, the city will just have to approve whatever the cable operator has offered us.

JAMES HORWOOD

more thoroughly, because what we've seen is that such cooperation might lead to real municipal cost savings.

LEHTO: My gut feeling is that as video dialtone becomes available, municipalities will be less strident in the demands they are willing to make of the cable operator. It will likely drag down the process. Many of the cities that I am working with are concerned about the competitiveness of their cable operator and will try to support them against a competitor. I think it will have a fairly dangerous impact on access and access providers.

HORWOOD: I agree. One of the real difficulties of telephone companies coming into the business is that telephone companies are generally regulated at the state and federal level and only a handful of states regulate cable at the state level rather than the local level. There has to be some kind of accommodation for different layers of regulation. I suspect that accommodation will take place at the state level and from the access standpoint that's going to be chancy. Some states are quite supportive of access while others are not. If you have video dial tone without any local requirements it's going to be considerably more difficult for access, which will then only come about at the sufferance of the video dial tone provider. There's a real need for this problem to be addressed in federal legislation as well as state legislation.

HERBST: I think it will have an effect on negotiations, if only because of the uncertainty about some of these new things that are coming out - not only video dial tone, but DBS as well. We don't know what the impact is going to be on cable systems. I think where we experience the most amount of concern is on potential municipal ownership situations. In several instances cities have drawn back and taken a "wait and see" stance because of the changes taking place. All of these things cause confusion or concern about taking risks and in the case of the renewal process, municipalities are a little bit guarded about taking a chance on demanding things from the operator that they might have done otherwise.

INGRAHAM: In closing, what's your best piece of advice - perhaps the best thing or the worst thing a municipality can do in the renewal process?

HORWOOD: The worst thing a community can do is throw up its hands and say that because renewal seems automatic there is nothing it

can do, the city will just have to approve whatever the cable operator has offered us. Despite the problems we have been discussing, there are a lot of opportunities available to cities at renewal, particularly what they can do to ensure meaningful and effective monitoring of the cable system. Cities can ensure that cable operators are adhering to their obligations and giving the city the type of cable system the city can reasonably expect to have, particularly in light of technology changes.

LEHTO: The municipalities who are just coming into the three year renewal process should be encouraged to use the time they have available. Cities should not rush into negotiations or even consider any unsolicited proposals made by the cable operator. I've seen several communities finalize fifteen year franchise renewals just a few months after the cable operator has initiated renewal proceedings under the thirty-six month window. It's just amazing to me that municipal people would be pushing into renewal without giving it the time that it surely deserves. I think that in the communities where we have active access organizations, access advocates should be going into neighboring communities and making sure that they aren't rushing into renewal.

PROCTOR: That has been our experience. A number of these communities are bringing out the facts to the public very close to or after renewal has taken place. Due process wasn't allowed to the public. In municipalities where we have gone in to assist unincorporated access groups, we have found that generally the access people have been in many cases the real movers, shakers and leaders - rattling cages at City Hall to say the process of this renewal seems to be running amok. We've gone and helped those access groups go back and talk to city councilors, to make sure the public is ensured due process. We've seen renewals where ascertainment was never done and it was essentially a closed door deal between operators and the local government officials. So we've had to assist a lot of access groups to become wiser cable renewal groups and we've seen those groups lead their cities through the process they should have been going through.

HERBST: What you're saying is really important because, as Neil said, taking the time to do a good job is exceedingly important, not only from the standpoint of developing a record, but as you've said for making people wiser. I think a key to the renewal process and perhaps one of the most important things is to educate the community, particularly the officials who are making the decisions. The better educated they are to understand what their options are and about past performance, future needs and all the elements that are necessary to put them in the position to develop a good franchise, the better they will

conduct the renewal negotiations. If you have a good process and take the time to be well informed, that leads to the best possible renewal.

Conference Call Participants:

Moderator: Sharon B. Ingraham, Guest Editor-in-Chief

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PUBLIC POLICY UPDATE

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advanced broadband network, or even the construction of a system to compete with existing cable systems; its most likely result is that telephone companies would buy out and operate existing cable systems. Hence it is essential that current regulatory safeguards not be removed with respect to television by wire whether provided by telephone companies or cable companies.

— Carl Kucharski
Public Policy Committee Chair

Carl Kucharski is Executive Director of ACTV Cable 21, located at 394 Oak St., Columbus OH, 43215. Phone: (614) 224-2288.

INTERNATIONAL UPDATE

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tures which facilitate collaborations is evidence of change in the course of international community media developments. It is a show of strength on local and regional levels, and it is a statement of differences which are central to issues of preservation. Although there was no proposal to further the concept of an international coalition at this time, we are definitely moving forward in recognition of diversity.

— Karen Helmersen
International Committee Chair

Karen Helmersen is the Director of Finance at Film/Video Arts. Write to her at 817 Broadway, New York, NY, 10003. Phone: (212) 673-9361

PROGRAM DIRECTOR

Deep Dish TV is a national network committed to using television as an outlet for creative grassroots, community and independent video addressing issues and perspectives inadequately represented by mainstream media to strengthen and increase the visibility of movements for social and economic justice. Deep Dish distributes non-commercial programming via satellite to a network of several hundred cable systems as well as public broadcasting stations and home dish viewers. The program director is responsible for the development, production, acquisition and oversight of all programming on the Deep Dish Network, under the direction of the executive director and in consultation with the programming committee of the board of directors. People of color, lesbians and gay men, and women are encouraged to apply. Salary \$22-25K DOE + benefits.

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